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Any rare plant species within the ~~Study Area (including the~~ 100-foot-wide ROW, ~~50-foot-wide buffer zone on each side of the ROW,~~ work areas, staging areas, and/or launcher/receiver stations) will be flagged, accurately mapped on construction plans, and fenced to protect the area occupied by the species during construction. Installation of construction fencing shall be conducted to the satisfaction of supervised by an Environmental Monitor (a qualified biologist approved by the CSLC, USFWS, and CDFG), and appropriate buffer distances from the rare plant population shall be determined on-site by the Monitor. The Monitor shall have the authority to require installation of silt fencing in highly sensitive areas or under certain conditions where potential erosion may impact a special status plant species or its habitat.

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#### **BB-3a Tree Avoidance and Replacement (page D.4-39)**

This mitigation measure requires evaluation of all trees that would be removed. This could be interpreted to include non-native palms, elms, or other trees that are undesirable or ornamental in the project area. Impacts to these trees would only be significant if they are protected by a local ordinance and the language should be clarified to indicate "protected trees."

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A "proposed understory native seed mix" is specified for tree replacement plan. This specification is practical for and should be limited to areas where a native understory is currently present.

SFPP proposes the following revisions to two portions of this mitigation measure:

The initial step for this measure shall be to determine the size and location of all protected trees located within and adjacent to the project right-of-way, work areas, staging areas, and launcher/receiver stations.

- Proposed understory native seed mix composition and application methods in areas where a native understory is currently present.

#### **BB-5a Wetland Avoidance and Restoration**

This mitigation measure specifies that "all equipment, vehicles and associated construction materials shall be placed on protective mats to avoid soil compaction, such that they do not make contact with the wetland." Several characteristics of the wetlands in the construction right-of-way make this requirement unnecessary and infeasible:

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- Most of the wetlands within the construction right-of-way will be dry during construction. Saturated soils can be easily displaced by heavy equipment but dry soils are not likely to be compressed by ordinary construction vehicles.
- The soils associated with most of the seasonal wetlands in the project area have high shrink-swell potentials. The alternating drying and wetting of the soil causes the soil profile to

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“churn” as the soil contracts and expands with the changing soil moisture content. Shrinking and swelling of the profile would tend to reverse compaction caused by heavy equipment.

- Most of the wetlands in the project area are dominated by native and non-native plant species that are very tolerant of disturbance. It is unlikely that temporary soil compaction would adversely affect the reestablishment of vegetation in the typical seasonal wetlands. Examples include the seasonal wetlands in the Yolo Bypass, seasonal alkali marsh wetlands east of Cordelia Slough and the seasonal alkali marsh wetlands located east of Pennsylvania Avenue near Fairfield.

Mitigation measure BB-5a also specifies that the top 12 inches of soil “shall be salvaged and stored in an upland location.” This measure is not necessary in wetland types where sensitive vegetation types are not present. Examples of wetland types that are not likely to be affected by the placement of temporary fill material include seasonal marsh, seasonal alkali marsh, and seasonal seep. The potential issues associated with temporary fill material in these wetlands are also addressed by mitigation measure BB-5b.

We request that 10 “working days” be specified instead of 10 days. We also request that language be added to wetlands mitigation measure specifying that the USACE 404 permit requirements would supercede mitigation measures in the EIR in the event that they are different.

This mitigation measure requires “topographic assessments” and monitoring of vegetation and hydrology to compare with pre-construction conditions. There is no quantitative baseline information for pre-construction hydrology. Therefore, this bullet should be clarified that the assessments will be “qualitative” based on wetland delineation maps and data.

The following modification to BB-5a (page D.4-43) is suggested:

Wetland Avoidance and Restoration. SFPP shall avoid, minimize, and/or compensate for damage and/or loss of wetland vegetation types due to pipeline construction activities by completing the following:

- ◆ Maximum avoidance of jurisdictional wetlands by fencing wetlands and appropriate buffer zones.
- ◆ Restricted vegetation removal and topsoil storage and replacement.
- ◆ Consultation with the USACE and RWQCB for any unavoidable wetland impacts.
- ◆ Preparation and implementation of wetlands restoration for any unavoidable impacts to wetlands.
- ◆ Supervision Monitoring and verification of the implementation of these measures by the Environmental Monitor.

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Avoidance will consist of fencing the wetlands within the ROW, including appropriate buffer zones, to minimize impacts to wetland vegetation types. If construction work areas and/or associated overland travel in wetlands is unavoidable, construction activities will be timed to occur when the soils are not expected to be saturated, primarily coinciding with the dry season. In wetlands with saturated soils, all equipment, vehicles and associated construction materials shall be placed on protective mats to avoid soil compaction, such that they do not make direct contact with the wetland. Vegetation clearing and/or installation of mats shall be conducted only from areas scheduled for immediate construction work (within 10 working days) and only for the width needed for active construction activities. Mats shall be removed immediately following completion of activities within each active construction area. During pipeline construction, the 12 inches of topsoil in areas where sensitive vegetation types are present shall be salvaged as practical, stored in an upland location, and replaced wherever the pipeline is trenched in wetlands. Prior to permit issuance and final design, project construction plans shall depict appropriate measures for topsoil protection and storage that will allow survival of native seed within the topsoil. Topsoil shall be placed at the surface on top of fill material and not be used to backfill the trench, and excavated trench spoils or excess fill shall be placed on top of the pipeline under topsoil and not dispersed onto the surface of the ROW. Implementation of these measures prior to and during construction will be supervised monitored and verified by the Environmental Monitor (see Mitigation Measure BW-2b).

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Also, please add the following sentence to the end of this mitigation measure:

Conditions in the USACE 404 permit and/or the USFWS Biological Opinion to be issued for this project supercede mitigation measures in the EIR in the event that they are different.

#### ***BB-5b Trench Backfill and Topographic Restoration (page D.4-44)***

Salvaging topsoil in saturated wetland areas is generally ineffective and not practical. This mitigation measure lists a number of agencies that will be required to conduct an evaluation that they may or may not have the desire or expertise to conduct. It is likely that one or more of the Counties will defer this evaluation to the USACE or other agencies. The EIR presents no data or analysis showing why additional regulation by these other agencies is necessary or how it would mitigate adverse impacts or provide any greater level of protection than compliance with the regulations of the USACE or other agencies already entrusted with the protection of biological resources.

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We request that as portion of this mitigation measure be revised as follows:

Prior to construction, soil and grade restoration measures shall be provided to responsible agencies (including the RWQCB, CDFG, USACE, and County agencies) shall evaluate soil and grade restoration measures to be implemented along the ROW. If a responsible agency indicates that these measures are not adequate, the Applicant shall revise the measures

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with input from the commenting agency. Restoration of wetlands directly impacted by pipeline construction is addressed in Mitigation Measure BB-5a. To prevent hydrologic impacts to wetlands and associated vegetation resulting from pipeline backfill activities the following procedures shall, at a minimum, be addressed, in accordance with any permit conditions issued by responsible agencies:

- ◆ Excavation, soil storage and backfill methods to ensure that topsoil returned to the surface and is not be used to backfill the trench, and subsoil is not be dispersed onto the surface.
- ◆ Requirements for the separation of topsoil and subsoil in upland storage locations as practical.

#### ***BB-5c Riparian Avoidance and Restoration (page D.4-45)***

Salvaging topsoil in saturated wetland areas is generally ineffective and not practical. We request that the words “as practical” be added to the eighth bullet in this mitigation measure.

We request that 10 “working” days be specified instead of 10 days in the ninth bullet.

#### ***BB-6a Weed Management (page D.4-47)***

This mitigation measure requires vehicles to be cleaned prior to off-road use. Cleaning every vehicle each time the vehicle leaves the road is not be feasible for long linear projects and may not accomplish the objective of reducing the spread of invasive species since vehicles will be able to travel significant distances off road along the pipeline alignment.

With respect to the fourth bullet, there are a number of areas where using certified weed-free fill material may not be necessary (e.g. urban construction, in road construction, agricultural fields and other areas that do not support sensitive species).

We request that this measure be changed as follows:

- ◆ Vehicles used in pipeline construction will be cleaned prior to operation off of maintained roads within pipeline segments where sensitive natural communities are present. Segments with sensitive natural communities include the grassland and vernal pool habitats located from MP 44.6 to 45.3 and MP 52.7 to MP 53.9, the oak woodlands and grasslands between MP 12.8 and MP 14.7 and the grasslands in the watershed of the Contra Costa goldfields occurrence between MP 19.7 and MP 19.9.
- ◆ Fill material, soil amendments, gravel etc. required for construction/restoration activities in areas with sensitive natural communities that would be adversely affected by introduction of non-native species shall be obtained from a source that can certify the soil as being “weed free.”

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#### ***BW-1e Minimize Disturbance at Water Crossings (page D.4-50)***

This mitigation measure (3<sup>rd</sup> paragraph) requires that “stream or wetland crossings shall be performed by conventional directional bore or horizontal directional drilling”. As currently written, this measure would require the entire Yolo Bypass to be bored. The text of this measure should be revised to indicate that crossings with flowing water should be bored or crossed using a horizontal directional drill (HDD), where feasible.

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In the 4<sup>th</sup> paragraph, daily monitoring of bores or HDD’s by a biological monitor at channelized or unvegetated waterways is specified with no rationale or justification. We request that the 4<sup>th</sup> paragraph of the mitigation measure be deleted or changed to indicate that the contractor shall periodically inspect the water at the crossing for evidence of a frac-out.

#### ***BW-2a Reduce Direct Mortality to Wildlife (page D.4-52)***

The speed limit language in the first bullet should be modified to say “...not exceed 15 mph on ~~the entire~~ non-paved portions of the ROW”

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#### ***BW-2b Employ Biological Monitors (page D.4-52)***

With respect to the last paragraph of this mitigation measure, SFPP believes that full-time monitoring by a biologist at HDD and bored crossings is excessive, burdensome and that the objective of protecting wildlife can be accomplished in a more reasonable manner. The USFWS and NMFS do not typically require this level of monitoring at sites with giant garter snake or anadromous fish present. The rationale for requiring a level of monitoring effort greater than that which is required by the agencies already entrusted with the protection of biological resources is not clearly stated. We propose that the resources can be protected using a strategy that includes full-time monitoring by a construction monitor, with a qualified biologist available as needed, and we request that the mitigation measure be re-worded.

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We also suggest that the language be changed to state that during construction, sensitive species habitat will be monitored in accordance with the requirements of the Corps, USFWS, NMFS and CDFG. Additionally, if it is not the intent to have CSLC biologist monitor this project, we request that this and other mitigation measure be reworded to state “a qualified monitor approved by the CSLC” instead of a monitor provided by the CSLC.

#### ***BW-3a Protect Special Status Wildlife (page D.4-53)***

Unless CSLC can articulate a basis for requiring more stringent requirements than the USFWS, USACE and CDFG, the beginning of the mitigation measure should be revised as follows:

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Protect Special Status Wildlife. Where construction will occur within or near known or potential special status species habitat, as defined below, the Applicant shall perform the actions defined in the following paragraphs if required in project permits/approvals from the USACE, USFWS and/or CDFG.

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California red-legged frogs detected during the pre-construction surveys are not likely to be present when construction begins; therefore capture of frogs seems excessive unless the frogs are detected immediately prior to ground-disturbing impacts and the frog does not leave the project area on its own. Wording should be revised to specify relocation and capture as a last resort only implemented immediately prior to construction.

This mitigation measure also specifies that giant garter snakes observed during surveys conducted up to one week prior to construction should be captured and relocated. This measure is in conflict with typical protocols for avoiding impacts to giant garter snake (GGS). All perennial waterways where the snake might be encountered would be crossed by a horizontal directional drill or a bore; therefore capture of giant garter snake would be unnecessary. Furthermore, construction would be timed to occur during the active period for the snake as required by USFWS and CDFG; therefore the snakes are likely to relocate themselves without intervention by a biologist. We suggest that giant garter snake preconstruction surveys should be conducted immediately prior to construction (1 day maximum). If present, a GGS should be allowed to leave the work area on its own without capture and handling.

The term "special status vernal pool branchiopods" used in the heading for this bullet would include non-listed species like California linderiella. The mitigation measure states that "construction activities will not occur within 250 feet of occupied vernal pools or swales." The proposed pipeline alignment would avoid all occurrences of listed branchiopod species; however, some habitat occupied by listed branchiopods is located within 250 feet but would be avoided because the pipeline is separated from the occupied habitat by a well-defined physical/hydrologic barrier. There are three exceptions to this statement that have not been avoided: two vernal pool fairy shrimp sites and one vernal pool tadpole shrimp site. The mitigation measure should be revised to address direct and indirect impacts to three sites where listed branchiopods have been documented and similar impacts to occurrences of California linderiella, a non-listed branchiopod. We suggest the following changes:

No construction activities will take place without authorization from the USFWS within 250 feet of occupied vernal pools or swales, as determined by the 2002 wet season protocol surveys (Appendix 1A) and the 2003 surveys conducted by URS unless the pipeline ROW is separated from the occupied habitat by a well-defined physical/hydrologic barrier. The edge of the ROW adjacent to these locations will be flagged and/or staked (BW-1b) by the designated biological monitors (BW-2b) prior to approved construction activities.

Surveys for burrowing owls are specified, but the third paragraph following this bullet does not acknowledge the option described in the fifth paragraph to passively exclude the owls prior to the breeding season that would eliminate the need to conduct the intensive surveys described in this paragraph. We suggest that the third paragraph should be modified as follows:

Potential burrowing owl habitat shall be surveyed by a qualified biologist to determine the presence of nesting burrowing owls. No more than two weeks before construction, a

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qualified biologist shall conduct surveys for occupied owl burrows within 500 feet of the construction corridor in areas that support potential owl habitat. The survey shall conform to California Burrowing Owl Consortium protocol (April 1993), which includes up to four surveys on different dates if there are active owl burrows present. However, if owls have been passively excluded from potential nest sites prior to construction, as described below, the preconstruction survey would consist of one site visit conducted according to the protocol described above.

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Salt marsh harvest mouse mitigation measures described in the second bullet on Page D.4-55 specify preconstruction presence-absence surveys and the removal of vegetation with handtools. It is our understanding that the U.S. Fish and Wildlife Service will not require preconstruction surveys because presence has been assumed where suitable habitat is present and that mechanized removal of vegetation in salt marsh harvest mouse habitat will be permitted. We suggest the following modification to this measure:

Where construction is proposed to occur within potential salt marsh harvest mouse habitat (i.e., salt marsh and alkali salt marsh habitat and areas described in Table D.4-7, the Applicant shall:

- ◆ ~~Conduct pre construction presence absence surveys (BW 1a).~~
- ◆ Remove vegetation with handtools or slowly using mechanized equipment with a biological monitor present.
- ◆ Segregate and replace topsoil; and ...

#### B-3a Pipeline Operations and Maintenance (page D.4-68)

Measures that require the development of pipeline inspection procedures that minimize impacts to sensitive vegetative communities and wetlands, including proposed travel routes, limiting off-road vehicular travel and creating maps of sensitive areas to be avoided are reasonable. With these measures in place, recording off-road travel, documenting routes taken and describing the sensitive resources avoided will not reduce adverse impacts and are unnecessary. Additionally, it is not realistic to expect that a pipeline inspector would be able to prepare "a description of the sensitive resources avoided" as required in the fifth bullet. Also, there is no discussion as to how this measure would reduce adverse impacts. SFPP requests that the fifth bullet be deleted as shown.

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- ◆ ~~Off road vehicular travel must be recorded in writing, including purpose for off-road vehicular travel, a map of the route taken, date, and a description of the sensitive resources avoided.~~

The sixth bullet establishes a condition that contradicts the CSFM, DOT and SFPP requirements for conducting visual inspections and provides no rationale as to why additional protection is required. This bullet should be revised to read:

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Off-road vehicular travel shall be minimized ~~prohibited~~ during rainstorms or within a two-week period following any precipitation event.

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#### *B-4a Cordelia Mitigation Segment (page D.6-7)*

Though this route would reduce short-term impacts to natural habitat, potential long-term impacts related to a pipeline release in this vicinity would be similar to the proposed route. Additionally, the proposed route would have lesser traffic, land use and possibly cultural resource related impacts. In our view, this mitigation segment is not environmentally superior overall and SFPP requests that it be dropped from further consideration.

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#### **Environmental Contamination and Hazardous Materials**

The significance criteria in Section D.6.3.2 state:

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An impact would be considered significant and require additional mitigation if project construction or operation would:

- ◆ Be expected to result in soil contamination, including flammable or toxic gases, at levels exceeding federal, State, and local hazardous waste limits established by 40 CFR Part 261 and Title 22 CCR 66261.21, 66261.22, 66261.23, and 66261.24;
- ◆ Result in mobilization of contaminants currently existing in the soil, creating potential pathways of exposure to humans or wildlife that would result in exposure to contaminants at levels that would be expected to be harmful; or
- ◆ Result in the presence of contaminated soils or groundwater within the project area, and as a result, expose workers and/or the public to contaminated or hazardous materials during pipeline construction activities, at levels in excess of those permitted by California Occupational Safety and Health Agency (CAL-OSHA) in CCR Title B and the Federal Occupational Safety and Health Administration (OSHA) in Title 29 CFR Part 1910.

The significance criteria in the EIR are related to (1) exceeding concentration levels in state and federal regulations for hazardous waste, (2) mobilizing constituents and (3) exposing workers or the public to concentrations that exceed the standards listed in the criteria. Though these factors were considered by URS in preparing the contamination assessment report, they were not used to develop the high, medium and low ranking.

High and medium sites in the URS report were designated for the purpose of identifying any areas where contaminated soil and or groundwater would likely be encountered that would result in additional costs and possibly slower construction due to special handling requirements, factors not directly related to the significance criteria. Though avoiding these areas by re-routing the alignment would avoid these costs and potential delays, if construction in these areas were to occur, implementation of standard health and safety procedures as specified in a contingency